

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
GREENVILLE DIVISION**

IN RE:

Appalachian Oil Company, Inc.)	Chapter 11 Case No.
Debtors)	09-50259

Agnes C. Davis)
Movant)
)
v.)
)
Appalachian Oil Company, Inc.)
Respondent)

**REPLY TO DEBTOR'S MEMORANDUM BRIEF IN OPPOSITION
TO MOTION FOR RELIEF FROM STAY FILED BY
AGNES C. DAVIS**

Now comes Agnes C. Davis, by counsel, and for her reply states as follows:

ARGUMENT

Agnes C. Davis agrees with the Debtor that the lease that is the subject of the Motion for Relief from Stay is a commercial lease of land located in Virginia and that the applicable state law to determine the sufficiency of notice is Virginia law.

We agree with the Debtor that in Virginia, in order to terminate a lease, the notice to terminate must be clear and unequivocal leaving no doubt as to the intention of the party giving it. *See* 11B Michie's Jurisprudence, Landlord and

Tenant, § 46 Sufficiency of Notice. The effect of such notice is to put an end to the relationship of landlord and tenant. *Id.* We disagree with the Debtor because the notice was clear and unequivocal.

The termination letter dated January 24, 2009 letter states:

Appalachian Oil Co., Inc.
Box 1500 Highway 75
Blountville, Tenn. 37617

Dear Sir:

Due to the breach of Contract I will be compelled to contact another Oil Co. to take over the business at my Station at Ft. Chiswell.

Sincerely,
Agnes C. Davis

We disagree with the Debtor that the words "will be compelled" give rise to doubt or uncertainty. The Debtor knew they had an obligation to pay rent and they breached it. Furthermore, the word "termination," although not used in the letter, is not necessary. The phrase used by Ms. Davis that she *will* contact another oil company *to take over the business at the station* is consistent only with a termination of the existing leasehold.

Additionally, we disagree with the Debtor's interpretation that the letter when viewed on its face contains more of a threat to find another tenant rather than a communication of a clear and unequivocal termination of the lease. The

landlord did *not* say "unless you pay the rent I will be compelled..." which would be a threat. On the contrary Ms. Davis said because the Debtor had breached the contract "I will be compelled to contact another Oil Co..." which is not a threat. The fact that she is compelled to do something leaves no doubt as to what she is going to do. Thus there is a clear an unequivocal termination of this lease.

Lastly, the Debtor's argument that the landlord is required to take possession of the property and, if she does not then the lease is not terminated, is without merit. The lessor's right to take possession of the property is "in addition to any other rights and remedies to which she may be entitled..." *See* Lease, Article IV, Section 10.

CONCLUSION

For the reasons stated herein the Motion for Relief from Stay filed by Agnes C. Davis should be granted and the letter of January 24, 2009 be deemed sufficient as a matter of law to terminate the lease.

AGNES C. DAVIS
- by counsel -

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CERTIFICATE OF SERVICE

I, Daniel R. Bieger, Esq., do hereby certify that on the 4th day of August, 2009 I presented the foregoing to the Clerk of Court for filing and uploading to the CM/ECF System which will send notification of such filing to the following:

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and I hereby certify that I have mailed by United States postal Service the
document to the following non-CM/ECF participants:

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